Appendix.

What has been said above about a possible duty to de-energize applies equally to a possible duty to insulate. If warnings alone were inadequate precautionary measures, or if Central failed to warn, it was for the jury to determine under suitable instructions whether under all the circumstances Central's failure to insulate comported with the high degree of care required of it.

On a new trial of the issues under the third-party complaint, questions relating to the admissibility of a certain document now pressed by Ninnie will probably become moot. However, for whatever guidance it may be to the judge presiding at the new trial we will say that we think Judge Clancy was right in admitting it for purposes of impeachment only.

Judgment in favor of the plaintiff affirmed: judgment in favor of Central reversed and remanded for a new trial on all issues raised by the third-party complaint.

Appendix.

Judgment

(573)

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 6th day of July one thousand nine hundred and fifty-five.

Present:

Hon. CHARLES E. CLARK,
Chief Judge,

HON. CARROLL C. HINCKS,
Circuit Judge,

HON. J. JOSEPH SMITH,
District Judge.

ALBERT BANKS,
Plaintiff-Appellee,

v.

CENTRAL HUDSON GAS & ELECTRIC CORP.
Defendant-Appellant & Plaintiff-Appellee

v.

NINNIE BROS.
Third Party-Defendant-Appellant.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court in favor of the plaintiff be and it hereby is affirmed: judgment in favor of Central Hudson Gas and Electric Corp. as against Ninnie Bros. be and it hereby is reversed and action remanded for a new trial on all issues raised by the third-party complaint in accordance with the opinion of this court with costs to the defendant Ninnie Bros.

A. DANIEL FUSARO,
Clerk.

Decision on Petition for Rehearing

(579)

Petition for rehearing denied,
(Judge Smith concurring.)

C.E.C.
C.C.H.
U.S.C.JJ.

New Haven, Conn.
August 23, 1955.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
Filed: Aug 24, 1955
A. DANIEL FUSARO, CLERK

Appendix.

Order Denying Rehearing

(580)

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 24th day of August, one thousand nine hundred and fifty-five.

Present:

HON. CHARLES E. CLARK,
Chief Judge,

Hon. CARROLL C. HINCKS,
Circuit Judge,

HON. J. JOSEPH SMITH,
District Judge.

ALBERT BANKS,
Plaintiff-Appellee,

v.

CENTRAL HUDSON GAS & ELECTRIC CORP.,
Defendant-Appellant,
Plaintiff-Appellee,

v.

NINNIE BROTHERS,
Third Party Defendants-Appellants.

A petition for a rehearing having been filed herein by counsel for the appellee,

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

A. DANIEL FUSARO,
Clerk